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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF: MM DOCKET NO. 95-154

CONTEMPORARY MEDIA, INC.
Terre Haute, Indiana
CONTEMPORARY BROADCASTING, INC.
Columbia, Missouri
Huntsville, Missouri
LAKE BROADCASTING, INC.
Eldon, Missouri
Cuba, Missouri
Bourbon, Missouri

*Rec'd
12/6/95
11:50 A.M.
JG*

DATE OF HEARING: November 29, 1995 VOLUME: 1
PLACE OF HEARING: Washington, D.C. PAGES: 1 - 19

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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 4 In the matter of: :
 :
 5 Contemporary Media, Incorporated :
 Terre Haute, Indiana :
 6 :
 Contemporary Broadcasting, Inc. : MM Docket No. 95-154
 7 Columbia, Missouri :
 Huntsville, Missouri :
 8 :
 Lake Broadcasting, Incorporated :
 9 Eldon, Missouri :
 Cuba, Missouri :
 10 Bourbon, Missouri :
 -----x

11
 12 The above-entitled matter came on for prehearing
 conference pursuant to notice before Judge Steinburg,
 13 Administrative Law Judge, at 2000 L Street, N.W., Suite 201,
 Washington, D.C. in Courtroom Number 3 on Wednesday, November
 14 29, 1995 at 9:00 a.m.

15 **APPEARANCES:**

16 On behalf of the Mass Media Bureau:

17 GARY P. SCHONMAN, ESQUIRE
 ANTHONY MASTANDO, ESQUIRE
 18 Federal Communications Commission
 2025 M Street, N.W., Suite 7212
 19 Washington, D.C. 20554

20
 On behalf of Contemporary Media, Inc., Contemporary
 21 Broadcasting, Inc., and Lake Broadcasting, Inc.:

22 SHELLEY SADOWSKY, ESQUIRE
 MICHAEL DEAN GAFFNEY, ESQUIRE
 23 Rosenman and Colin, L.L.P.
 1300 19th Street, N.W.
 24 Washington, D.C. 20036

25 Hearing Began: 9:00 a.m. Hearing Ended: 9:28 a.m.

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P R O C E E D I N G S

(9:00 a.m.)

JUDGE STEINBERG: We're on the record now. This is a prehearing conference in MM Docket No. 95-154 involving an Order to Show Cause and Notice of Apparent Liability, FCC 95-410, released by the Commission on October 10, 1995.

The Order to Show Cause involves the question of whether the various licenses and permits of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. should be revoked and whether an application filed by Lake should be granted.

For convenience, all three of these parties will be collectively referred to as Contemporary. Issues were specified to determine the effect of a principle's criminal convictions on the basic qualifications of Contemporary to determine whether misrepresentations were made to the Commission by Contemporary and to determine whether there was an unauthorized transfer of control of Contemporary.

By Order released October 19, 1995, the Chief Administrative Law Judge assigned the case to me and set the date of the hearing for March 19, 1996. Let me first take the appearances of counsel for Contemporary.

MS. SADOWSKY: Shelley Sadowsky and Michael Gaffney, Rosenman and Colin.

JUDGE STEINBERG: And for the Chief, Mass Media

1 Bureau?

2 MR. SCHONMAN: Good morning, Your Honor. Gary
3 Schonman and Robert Zauner on behalf of the Mass Media Bureau
4 and I'd also like to take this opportunity to introduce
5 Anthony Mastando. Mr. Mastando is a recent law school
6 graduate, and he's awaiting the results of the New York bar
7 exam, and he recently joined the Mass Media Bureau's
8 Enforcement Division, and he is helping us out considerably on
9 this case.

10 JUDGE STEINBERG: Welcome.

11 MR. MASTANDO: Thanks. I'm awaiting with
12 trepidation.

13 JUDGE STEINBERG: I awaited the results of the New
14 York bar exam with trepidation and if I got through, anybody
15 could, I guess, although I lived with a cousin of mine while I
16 studied for the exam and he bet my father five bucks I'd
17 flunk. And I didn't, so I guess I surprised everybody.

18 Let's move on now that I've lightened the
19 proceedings up a little bit. According to my files, there
20 aren't any pending pleadings. Is that correct? I've disposed
21 of everything that was in front of me.

22 MR. SCHONMAN: That's correct, Your Honor.

23 MS. SADOWSKY: The Motion to Intervene's been
24 disposed of?

25 JUDGE STEINBERG: Yes. You didn't see it?

1 MS. SADOWSKY: No.

2 JUDGE STEINBERG: You come into my office
3 afterwards. We've got plenty of extras and if you need any
4 copies of any of my recent decisions, we've got plenty extra
5 of those, too.

6 MS. SADOWSKY: Thank you. May I ask what your
7 disposition was?

8 JUDGE STEINBERG: Do you see Mr. Colby here?

9 MS. SADOWSKY: No.

10 JUDGE STEINBERG: That's what my disposition was.

11 MS. SADOWSKY: I assumed that. Thank you.

12 JUDGE STEINBERG: And you don't see a speaker phone
13 up here. Now, let's turn to -- in my order prior to
14 prehearing conference where I asked counsel to meet and have
15 you met?

16 MR. SCHONMAN: Yes, Your Honor, we have.

17 JUDGE STEINBERG: And let's go through -- have you
18 got anything to report with respect to discovery?

19 MR. SCHONMAN: Your Honor, yesterday we served on
20 Contemporary's counsel the Mass Media Bureau's request for
21 admissions of fact and genuineness of documents. We
22 anticipate within the next two weeks or so going out with
23 request for documents as well as interrogatories.

24 At this time, in terms of discovery, insofar as
25 depositions go, we have, as you're well aware, considerable

1 budget restraints, so we're reviewing the possibility of
2 depositions.

3 JUDGE STEINBERG: Ms. Sadowsky?

4 MS. SADOWSKY: Your Honor, whether we conduct
5 depositions is determined upon what -- upon the information
6 that we obtain from Bureau. We do not know who the Bureau
7 intends to call for witnesses. We would probably eventually
8 depose certain of those individuals. And that's about as much
9 as I can say right now with respect to our discovery.

10 JUDGE STEINBERG: On discovery, I would just ask
11 that you make a good faith effort to cooperate with each other
12 and work things out between the two parties. Don't involve me
13 if it's at all avoidable. I'm a last resort.

14 MS. SADOWSKY: Your Honor, in that regard, this
15 morning, off the record, we had a conversation about the
16 response that's due to the Bureau's request for admissions of
17 fact and genuiness of documents and we asked Bureau if they
18 would consent to a two-week extension of time for our response
19 and they said they would. Would you want us to request that
20 in writing from you?

21 JUDGE STEINBERG: No. You can request it orally
22 here. And I haven't seen the request yet. You filed it
23 yesterday?

24 MR. SCHONMAN: Well, we didn't file it with the
25 secretary's office, but we did serve it on Contemporary's

1 counsel with a courtesy copy to Your Honor. You should be
2 getting it by interoffice mail.

3 JUDGE STEINBERG: Then it should be here this month.
4 So when would it -- was it ten days? It would normally be due
5 in ten days?

6 MS. SADOWSKY: Yes.

7 MR. SCHONMAN: That's correct, Your Honor.

8 JUDGE STEINBERG: And what's the new date?

9 MS. SADOWSKY: An additional two weeks from the
10 tenth day. I don't have my calendar with me.

11 JUDGE STEINBERG: I mean, there's no objection?

12 MR. SCHONMAN: No, there's no objection.

13 JUDGE STEINBERG: Then it's granted and if the tenth
14 day is a Saturday or Sunday, just make it the following
15 Monday. And I'm not going to put out an order. It's in the
16 transcript.

17 Like I said, with respect to discovery, just agree
18 among yourselves -- agree among yourselves what you're going
19 to do and only if you hit a brick wall come to me. I don't
20 want to be sitting here ruling on discovery motions if I don't
21 have to. Anything on -- did you want to say something else?

22 MS. SADOWSKY: Your Honor, could we go off the
23 record for a moment? I just wanted to talk about the
24 logistics of discovery and timing. With respect to whether or
25 not --

1 JUDGE STEINBERG: We'll do this on the record.

2 MS. SADOWSKY: With respect to whether or not we
3 would depose a particular individual, it seems to me that
4 we're going to need to know what individuals the Bureau
5 intends to call as witnesses before the exchange of the
6 affirmative case.

7 JUDGE STEINBERG: We can't do that. What you can do
8 is you can -- you can -- you can serve interrogatories on the
9 Bureau and ask them the standard question of identify all the
10 individuals of which you are aware that have relevant -- that
11 have knowledge, relevant knowledge concerning the issues.

12 And then they give you a list of names and then you
13 can pick and choose, and you can make them keep that updated.
14 For instance, I'm going to ask later about whether you've
15 spoken to Mr. Colby about what information his client has and,
16 you know, you can -- and I would request that if you -- you
17 know, if they serve that interrogatory on you, that you tell
18 them -- you know, give them the names and addresses and phone
19 numbers of the people that you presently know of that have
20 information relevant to the issues.

21 Now, if we're going to -- and let's not get into an
22 argument about relevance, you know, relevance and materiality.
23 Somebody -- anybody you know of that you think knows something
24 about what this is all about and if you later -- if you later
25 find out somebody and you interview them and they have

1 relevant knowledge, then you tell the other party
2 expeditiously about that.

3 And then you have to just make a determination as to
4 who and who you're not going to depose because I can't make
5 them and I don't think it's fair to make them disclose who
6 their witnesses are going to be before the exhibit exchange
7 date. It wouldn't be fair to them and that's the way it
8 usually works.

9 And I would expect the Bureau to basically turn over
10 whatever it has to Contemporary because they -- you know,
11 they've always got the threat of a Freedom of Information Act
12 request that they can hold over your head. So I think it's
13 just easier to just turn it all over. I mean, I assume you
14 will eventually. You know, they can request documents of you
15 and -- can they or do you have to do it under F.O.I.A.?

16 MR. SCHONMAN: Document requests on the Commission
17 are governed by FOIA.

18 JUDGE STEINBERG: Yeah, so you may -- I mean, FOIA
19 triggers all sorts of time tables and this and that and the
20 other thing which I know we used to try to avoid like the
21 plague and -- but anyway, that's for you to fight over.

22 But I would -- I would expect that you all would
23 cooperate with each other and not keep secrets. Unless
24 they're real good secrets that you want to spring. I mean,
25 that's fair.

1 MR. SCHONMAN: Your Honor, we have been cooperating
2 since the commencement of this proceeding. I don't anticipate
3 there being any problems.

4 JUDGE STEINBERG: Now, is it too early for a
5 stipulation of uncontested facts?

6 MR. SCHONMAN: Your Honor, I think the Bureau's
7 request for admissions --

8 JUDGE STEINBERG: Would cover that?

9 MR. SCHONMAN: -- would cover that.

10 MS. SADOWSKY: I think so.

11 JUDGE STEINBERG: Now, in terms of -- in terms of
12 the record, I think you ought to put in there copies of the
13 relevant statutes under which Mr. Rice was convicted, copies
14 of the indictments or the information, copies of the
15 convictions, you know, certified copies of stuff, and you
16 know, all that stuff so that -- so that I can read what the
17 accusations were, what the statutes were, was it -- was he
18 tried in a trial or was it --

19 MS. SADOWSKY: It was a stipulated hearing in
20 effect.

21 MR. SCHONMAN: Your Honor, the information that you
22 were just referencing by in large is included in the Bureau's
23 request for admissions which you will be receiving some time
24 this month as you said earlier.

25 JUDGE STEINBERG: So I won't worry about that yet.

1 Now, can there be any agreement on the submission of the
2 entire affirmative direct cases of the parties in writing?
3 Well, that's you.

4 MR. SCHONMAN: Your Honor, at this point, I'm not
5 exactly sure whether we would have all the testimony reduced
6 to writing. It's premature at this point to -- for me to
7 commit to that.

8 JUDGE STEINBERG: I would just -- I would urge you,
9 if you could, to do it that way. I know in some instances,
10 witnesses are not under your control and might have to be
11 subpoenaed and might have to present oral testimony and if we
12 have to, we have to. It's just a lot easier for everybody if
13 things are done in writing.

14 MR. SCHONMAN: I agree and to the extent that we can
15 reduce testimony to writing, we will endeavor to do that.

16 JUDGE STEINBERG: And I would ask if you've got a
17 rebuttal case, you know, that you try to do the same thing.
18 But if you can't, you can't. Now, the next question is --
19 concerns the distress sale option. Has that been discussed?

20 MS. SADOWSKY: That has been discussed, Your Honor.
21 At the moment, it does not appear to be something that our
22 client wants to pursue.

23 JUDGE STEINBERG: I just want to let you know that
24 you can elect this option, "before a hearing is initiated,"
25 and I'm quoting from the statement of policy on minority

1 ownership of broadcasting facilities which appears at 68 FCC
2 2d 979 which is from 1978.

3 So basically, you can leave that option open up
4 until the commencement of the hearing and I interpret the
5 commencement of hearing to be the admissions session --

6 MS. SADOWSKY: The admissions session.

7 JUDGE STEINBERG: Yeah, because that's when --
8 that's when evidence is -- the hearing is formally opened and
9 we receive exhibits. So just, you know -- so that's March
10 12th. Once I say, "On the record," and the hearing begins,
11 that's it, or "This is the beginning of the hearing," or
12 whatever I say. You know, up until that time, you've got the
13 option.

14 Now, the next thing in the order prior to prehearing
15 conference, I threw in just for the heck of it, and that's
16 whether a settlement of this case is possible. This has been
17 the subject of much discussion among the -- among some of the
18 judges around here who called me names that are not going to
19 be put on the record.

20 "How can this case be settled?" and I said, "I don't
21 know. Maybe they can think of ways. You know, four, five,
22 six heads are better than one." And so I just thought I'd
23 throw that in just to see if anything happened.

24 I doubt that it's possible to settle the case. I
25 doubt that the Commission would allow it to be settled. But I

1 just thought I'd throw it in just to see if anybody can think
2 of anything creative.

3 MS. SADOWSKY: Your Honor, we did discuss settlement
4 other than distress sale -- distress selling the stations and
5 we didn't get very far in that discussion. However, if I'm
6 not mistaken, there was a reference made to a pending case,
7 the Petroleum Nasby case, and depending on the outcome of that
8 case --

9 JUDGE STEINBERG: Was that the one with Tom Root?

10 MS. SADOWSKY: Yes. Depending on the outcome of
11 that case, we may revisit a settlement proposal. There are
12 more than -- there's more than one station involved in here,
13 in this case, and if a settlement that would involve some or
14 all of the stations could be crafted to the Commission's
15 satisfaction, we would like to pursue that.

16 JUDGE STEINBERG: I just want to leave the option
17 open. As I said, as things develop, you might realize that
18 your case isn't as strong as you thought it was or the
19 opponent's case is stronger than you thought it might be, and
20 I just want to leave that possibility open.

21 And as I said, you know, four brains, five brains,
22 six brains are a lot better than one, and things can get
23 creative, and I don't mind that. It's kind of interesting.
24 Do you want to speak to that? I think I know what -- I know
25 what the Bureau's initial position is, I think.

1 MR. SCHONMAN: Certainly the Bureau is concerned.
2 We have very serious questions here about Contemporary's basic
3 qualifications. On the other hand, certainly a settlement
4 would benefit everyone and the Bureau is not adverse to
5 considering suggestions and opportunities to settle.

6 JUDGE STEINBERG: For instance, if they came up to
7 you and said, "Well, Mr. Rice will no longer be president,
8 director, 100 percent shareholder. He's out totally and all
9 of his interests will go to other people and maybe -- and when
10 I pay a forfeiture to compensate the Commission for its
11 troubles and --" because there isn't any indication that
12 anybody else has been a bad person.

13 That might be something you'd consider since the
14 wrongdoer -- the alleged wrongdoer will be totally out of the
15 picture. But then again, you might say, well, there are other
16 people that participated in this alleged misrepresentation and
17 -- you know. So I'm saying there might be room there. Anyway
18 --

19 MR. SCHONMAN: Well, the Bureau would examine any
20 suggestions which Contemporary proffers.

21 JUDGE STEINBERG: Just neither party close the door.
22 Now, are there any questions -- anything else that we need to
23 discuss concerning the order prior to prehearing conference?
24 It was pretty straight-forward, I think. Are there procedural
25 dates in there presenting any problems to anybody? Other than

1 -- the hearing date is fixed, I take it.

2 MR. SCHONMAN: Your Honor, I think the dates are
3 adequate to the Mass Media Bureau.

4 MS. SADOWSKY: Your Honor, I can't say whether the
5 dates are going to be adequate for us at this point. I am
6 hoping that they are. My concern is if we are to present
7 written testimony, we may need more time for -- from the
8 completion of discovery to the exchange of the written cases.
9 That was my initial concern.

10 JUDGE STEINBERG: I just want to say I consider the
11 March 19th date firm. Within those dates, there's room to
12 maneuver. For instance, if you -- if you two agree that we'll
13 complete -- that February 23rd is inadequate to complete your
14 discovery, we can move that date.

15 If the exhibit exchange is -- you want a little more
16 time for that, we can move that. The same thing with the
17 admissions session. If you decide you don't need an
18 admissions session -- you know, I scheduled the admissions
19 because I thought it would be pretty -- it would be efficient.
20 But if you two decide we don't need an admissions session,
21 then we can convert that into a notification for cross date
22 and then we can set dates for objections and stuff like that.

23 But I -- you know, within the March 19th date, the
24 dates are flexible. So -- and I tried to pick these dates as
25 best I could to give you what I thought would be an adequate

1 time to prepare within the March 19th date. Now, any
2 questions on the scope of the issues?

3 MS. SADOWSKY: I think it's too early right now,
4 Your Honor, to go into that. I think it depends on what is
5 presented to us in the Bureau's request for admissions as well
6 as other discovery requests.

7 JUDGE STEINBERG: Mr. Schonman?

8 MR. SCHONMAN: We have nothing further, Your Honor.

9 JUDGE STEINBERG: If something like that comes up,
10 maybe we can arrange for another conference and take that up.
11 Now, the chief judge, in his assignment order, specified that
12 all proceedings shall take place in Washington, D.C. Now, Mr.
13 Rice is in -- is Mr. Rice incarcerated in Missouri?

14 MS. SADOWSKY: Yes.

15 JUDGE STEINBERG: Where in Missouri?

16 MS. SADOWSKY: In the Farmington Correctional
17 Center. I believe that's the name of the prison.

18 JUDGE STEINBERG: Do you know if arrangements can be
19 -- I assume he would test-- I assume he would be testifying
20 for somebody, either as a hostile witness or as part of your
21 case. Can arrangements be made for him to be transported to
22 Washington for his testimony?

23 MS. SADOWSKY: We have not yet looked into that.

24 JUDGE STEINBERG: I would ask you to look into that
25 and see if that's a possibility. If he can't travel, also

1 find out if arrangement can be made to take his testimony at
2 the place where he's incarcerated. We can all go out and
3 spend the day at the correctional institution. I might leave
4 my robes home, though. You know, sort of travel undercover.

5 And if the Bureau wants to depose Mr. Rice, can they
6 -- I'd like you to find out if they can go out there and take
7 his deposition. If you can find -- how long do you think it
8 will take to find these things -- because I'd like to know
9 that. You know, I'd like you to report to me on that.

10 MS. SADOWSKY: I can make inquiries this afternoon.

11 JUDGE STEINBERG: Why don't we say, you know, let me
12 know something in two weeks? It can just be by letter with a
13 copy to the Bureau or you can let the Bureau know with a copy
14 to me. There is precedent for incarcerated witnesses to be
15 accompanied to Washington by whomever and then they give their
16 testimony and then they go back to their new homes.

17 MR. SCHONMAN: Your Honor, I did have a case in
18 which a convicted felon was accompanied by Federal marshals to
19 Washington.

20 JUDGE STEINBERG: That can get expensive, though.
21 Who pays for that?

22 MR. SCHONMAN: You know, I don't recall. I don't
23 recall who --

24 JUDGE STEINBERG: We'll let Mr. Mastando take care
25 of that. No, I mean, somebody -- I don't know who would pay

1 for it, but if we need to take some of the testimony in the
2 field, then a motion has to be made to the chief judge and
3 he's going to -- I don't see any problem with him granting it,
4 but he's got to -- he's got to grant that relief, and that's
5 under Section 0.351(d) of the rules. So that's something that
6 we should find out. I don't see how Mr. Rice could not
7 testify. Does anybody see how he could not testify?

8 MR. SCHONMAN: If he stipulates to certain facts or
9 perhaps -- or a sworn statement prior to the hearing approved
10 by the Bureau.

11 JUDGE STEINBERG: I'm just wondering if I need to
12 eyeball him. But we can cross that bridge when we come to it.
13 I mean, maybe something -- some arrangements can be made.
14 There is the possibility of speaker phone.

15 But I think -- I think I'd want -- I mean, if he has
16 to testify, I think -- because we're dealing with a
17 misrepresentation issue and allegations that he's basically
18 cut out of the loop when the allegations are he wasn't cut out
19 of the loop and I think I'd want to look at him and -- okay,
20 but -- so you'll let me know about that.

21 MS. SADOWSKY: Yes. Yes, Your Honor, I will.

22 JUDGE STEINBERG: Now, I have questions for the Mass
23 Media Bureau. Have you contacted Lauren Colby to see what
24 additional information his client might possess?

25 MR. SCHONMAN: We have not yet contacted Lauren

1 Colby. We anticipate doing that later this week.

2 JUDGE STEINBERG: Because if his client -- I would,
3 in my order, deny intervention. I'd drop the footnote, too,
4 saying, "However, it is expected that KWIX, as a Commission
5 licensee, will cooperate fully with the Bureau." So I would
6 expect them to cooperate fully with the Bureau.

7 If -- you know, and I'd like to know if they're
8 going to cooperate, the Bureau is prepared to depose, or Mr.
9 Shepard and others -- perhaps subpoena Mr. Shepard and others
10 to appear and testify at the hearing. I mean, under the --
11 under the -- what was it? -- 1.223(b) of the rules, that
12 governs discretionary intervention and, you know, I'm assuming
13 that the Bureau will get this information out.

14 But if it appears the Bureau is not eliciting this
15 information, then I may have to revisit that ruling because I
16 think you should inquire into that and see what information
17 they have and whether you think it's relevant and material and
18 whether you'll -- and whether you're going to present it. I
19 don't want you to ignore that stuff. I don't think you will.

20 MR. SCHONMAN: Your Honor, we fully intend to speak
21 with Mr. Colby and obtain the information that he's aware of.

22 JUDGE STEINBERG: And if you have any problems with
23 their cooperation, let me know. We'll have a conference and
24 I'll direct him to be here and maybe his client can be here
25 and tell him, "I want you to cooperate." That concludes the

1 things that I had on my agenda. Anything else anybody wants
2 to bring up?

3 MS. SADOWSKY: I have nothing further, Your Honor.

4 MR. SCHONMAN: Nothing further, Your Honor.

5 JUDGE STEINBERG: If you feel the need for another
6 conference, call me and let me know and I'll try to get it
7 scheduled. If not, if I don't see you, then have happy
8 holidays and sorry to make you work through some of them.
9 Actually, I scheduled the dates so that you could probably do
10 most of your work after the holidays. Okay then, we'll go off
11 the record now.

12 (Whereupon, at 9:28 a.m. on Wednesday, November 29,
13 1995, the prehearing conference adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

Contemporary Media
Name

MM 95-154
Docket No.

Washington, DC
Place

November 29, 1995
Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 19, inclusive, are the true, accurate and complete transcript prepared from the reporting by Marykae Fleishman in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

11/30/95

Date

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